revocation is that there can be no revocation in the first place when its effect would be to create a new gift. Hence it would seem that, even though the attempted partial revocations are so numerous as to indicate that the testator would rather have died intestate than to allow the unaltered will to stand, the original instrument should be probated.[17]

INDEMNIFICATION OF CRIMINAL BAIL AS A CRIMINAL CONSPIRACY. — The private persons to whose custody as bail a prisoner is yielded up are compelled by the state to give bond, not because the state is willing to take that sum in the prisoner's stead, but because the fear of pecuniary loss will give bail a more lively sense of their duty.[1] If the sureties are indemnified against the absconding of the prisoner by a contract with, or a deposit by, any third party, the state still has some one who, through fear of pecuniary loss, will assume the duty of producing the prisoner.[2] But if the prisoner himself indemnify the bail or their indemnifiers, the state has virtually but the prisoner's own recognizance, plus the naked promise of bail. For this reason a promise by the prisoner of general indemnification of bail is not implied;[3] and an express promise is unenforceable.[4] Yet bail are not disqualified because the prisoner has agreed beforehand to indemnify them,[5] nor has any decision been found that depositing the amount of the bond with the bail is a crime on the part of the prisoner.

A recent decision in England has, for the first time, held that a contract by the prisoner generally to indemnify bail is a criminal conspiracy, even though the bail acted innocently, with no intent to allow the prisoner to abscond and thus to hamper justice. *Rex* v. *Porter*, 26 T. L. R. 200 (Eng., Ct. Crim. App., Dec. 17, 1909). A criminal conspiracy is a combination of two or more to do something unlawful either as a means or as an ultimate end.[6] A crime is unlawful in this sense;[7] but if a completed indemnification, a deposit, is not a crime, *a fortiori* the contract cannot be criminal as being an agreement to commit a crime. The act to be done, however, need not be a crime: any unlawfulness of greater public concern than a trivial private wrong may be enough.[8] A contract of indemnity is unlawful in the civil sense of being unenforceable,[9] but cannot upon this ground alone be considered criminal. But it may well be said that when a contract, ordinarily merely unenforceable, becomes the means through which two or more intend to do something to the prejudice of the community, a criminal conspiracy exists.[10] Thus agreements tending to interfere with the administration of government have been held criminal.[11]

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[17] But *cf.* *In re* Knapen's Will, 75 Vt. 146.

[1] Cripps *v.* Hartnoll, 4 B. & S. 414. See 22 HARV. L. REV. 530.
[2] People *v.* Ingersoll, 14 Abb. Pr. N. S. 23. See 22 HARV. L. REV. 530.
[3] Jones *v.* Orchard, 16 C. B. 614.
[4] Herman *v.* Jeuchner, 15 Q. B. D. 561.
[5] Rex *v.* Broome, 18 L. T. O. S. 19; Reg. *v.* Badger, 4 Q. B. N. S. 468.
[6] U. S. *v.* Benson, 70 Fed. 591, 594. The main case accepts this definition.
[7] See MAY, CRIMINAL LAW, 3 ed., 171–172.
[8] Rex *v.* Turner, 13 East 228; Rex *v.* Pywell, 1 Stark. 402. See MAY, CRIMINAL LAW, 3 ed., 171–172.
[9] Herman *v.* Jeuchner, *supra.*
[10] Rex *v.* Brailsford, [1905] 2 K. B. 730; Rex *v.* Higgins, 2 East 5, 21.
[11] Rex *v.* Mawbey, 6 T. R. 619 (agreement to present false testimony); Rex *v.*

Contracts to indemnify bail might be regarded as criminal conspiracies on two grounds. (1) It is said that their inevitable tendency is to make bail careless and allow the prisoner easily to abscond.[12] But the authorities seem sound in holding that the tendency is really not so inevitable as to condemn the contract on that ground.[13] (2) An agreement to cheat has been held criminal;[14] and if a contract to indemnify bail is to be deemed necessarily a conspiracy to cheat the state into a virtual release of the prisoner on his own recognizance, then surely it must be criminal. If the unlawful act contemplated must, in its inevitable consequences, be prejudicial to the community, an intent to do that act is a sufficient evil intent.[15] If, however, the act contemplated is not, for either of the reasons given, sufficiently harmful, a wrongful intent must be distinctly found as a fact.[16] It is submitted that in the main case the unlawful act is not so closely bound up with the possible consequential harm to the community,[17] that the intent to do that act is necessarily an evil one, even in the face of a jury finding that no evil consequences were in fact intended.

RECENT CASES.

ADVERSE POSSESSION — AGAINST WHOM TITLE MAY BE GAINED — ESTABLISHMENT OF STATE BOUNDARY BY LAPSE OF TIME. — In 1788 a line was surveyed and marked as the boundary between Maryland and Virginia. Maryland disputed the correctness of the line, and between 1820 and 1830 carried on unsuccessful negotiations with Virginia to have it corrected. In 1859 it had another line surveyed and made repeated attempts to have this accepted as the boundary. The original line was always treated as the boundary by private landowners, and the two states exercised their jurisdiction with reference to it. In 1891, Maryland filed a bill to have the Supreme Court settle the dispute. *Held*, that the original line must be established as the boundary. *The State of Maryland* v. *The State of West Virginia*, U. S. Sup. Ct., Feb. 21, 1910. See NOTES, p. 555.

ALIENS — NATURALIZATION — "FREE WHITE PERSONS." — A Syrian applied for naturalization. *Held*, that he should be admitted. *In re Najour*, 174 Fed. 735 (Circ. Ct., N. D. Ga.).

An Armenian applied for naturalization. *Held*, that he should be admitted. *In re Halladjian*, 174 Fed. 834 (Circ. Ct., D. Mass.).

The phrase "free white person" has run the entire gamut of the naturalization laws. ACT MARCH 26, 1790, c. 3, 1 U. S. STAT. AT L. 103; ACT FEB. 18, 1875, c. 80, U. S. COMP. St. (1901), § 2169. Its temporary omission in 1873 was probably an inadvertence. See *In re Saito*, 62 Fed. 126. Since the abolition of slavery the word "free" is mere surplusage. The word "white" has proved a fruitful source of argument. To the scientific mind at the time the first statute was drafted

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Steventon, 2 East 362 (to prevent the attendance of witnesses); Rex *v.* Sterling, 1 Lev. 126 (to impoverish the excise men and diminish the king's revenue).

[12] But see Rex *v.* Stockwell, 66 J. P. 376 (Cent. Crim. Ct., 1902).

[13] Rex *v.* Broome, *supra;* Reg *v.* Badger, *supra.*

[14] Curley *v.* U. S., 130 Fed. 1. See MAY, CRIMINAL LAW, 3 ed., 173.

[15] Rex *v.* Brailsford, *supra.*

[16] People *v.* Flack, 125 N. Y. 324. See MAY, CRIMINAL LAW, 3 ed., 173.

[17] Rex *v.* Stockwell, *supra.*